ROSS L. KINNAMAN

IBLA 79-602 Decided June 17, 1980

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting competitive oil and gas lease bid for parcel 17, NM 37902 (Okla.).

Reversed and remanded.

1. Oil and Gas Leases: Competitive Leases -- Regulations: Generally

Where a bidder submits with his bid one-fifth of the amount due in the form of a personal money order payable to the Bureau of Land Management pursuant to the provisions of the applicable regulation, 43 CFR 3120.1-4(b), and statements on the sale notice allowing money orders, his bid may not be rejected for not being in conformity with the intent of the regulations.

APPEARANCES: Ross L. Kinnaman, _pro se_.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

In a competitive oil and gas lease sale held on July 10, 1979, appellant was declared the high bidder for parcel 17, NM 37902 (Okla.). The total bonus bid was $1,140, one-fifth of which appellant submitted in the form of a personal money order.

Subsequent to the sale, the personal money order was submitted to the bank with a questionnaire. The responses by the bank indicated that they guaranteed that funds were on deposit at the bank to settle the check, but that the personal money order was not equivalent to a cashier's check, certified check, or personal check. Additionally, the bank indicated that payment could be stopped by appellant. By decision of August 17, 1979, the State Office rejected the high bid.

In its decision, BLM stated that the term "money order" in the applicable regulation, 43 CFR 3120.1-4(b), is intended to mean a guarante remittance such as a postal money order or bank money order, for which funds are guaranteed by the U.S. Postal Service or the bank on which it i drawn. Appellant's personal money order permitted him to keep the funds within his control until it was presented and final payment made. Indeec payment could have been stopped by appellant. Since the other bidders lo control of their funds upon submission of their bids, BLM concluded that appellant had an unfair advantage by having retained control of his funds citing the holding of the Board in Mesa Petroleum Co., 37 IBLA 103 (1978)

In Mesa Petroleum Co., supra, the appellant had submitted one-fifth o the total amount bid in the form of a sight draft which, like the remittance in the present case, permitted it to maintain control of the funds in drawee. Until presentment and final payment, a sight draft commits no part of the funds to the payment of the debt. Nowhere, howeve in either the regulations or in statements on the sale notice was a sight draft identified as an acceptable form of remittance for the bid deposit. Appellant in that case mistakenly thought his draft was a bank draft, whi would have been acceptable.

[1] In the present case, appellant submitted his one-fifth deposit i the form of a money order albeit a personal money order. The sale notice stated that a money order was an acceptable form of remittance for the one-fifth deposit. The statement on the sale notice does not qualify mor order, or expressly indicate that a specific type of money order is required. Appellant here, unlike the appellant in Mesa Petroleum Co., supra, has made no mistake as to which form of remittance is acceptable. The question is simply what is meant by the term "money order."

We would note, initially, that "personal money orders" have been characterized as "mavericks" under the Uniform Commercial Code. State v. LaRue, 487 P.2d 255, 257 (Wash. App. 1971). In State v. LaRue, supra, th court quoted with approval the following excerpts from a law review comment, entitled Personal Money Orders and Teller's Checks: Mavericks Under the UCC, 67 Col.L.Rev. 524, 525 (1967):

> Personal money orders were first issued in 1937 and have grown steadily in popularity since 1944, when the price of the competing Post Office Money Order was raised. Personal orders are attractive to people who have no ordinary checking accounts, for they offer a safe, inexpensive, and readily acceptable means of transferring funds, in a form that has the prestigious appearance of a personal check. Moreover, banks favor the instruments because they are simpler, faster, and less expensive to issue than cashier's checks and bank money orders; because they attract potential customers for other bank services;

> and because they can create a substantial deposit balance for the bank's use.
>
> The typical personal money order consists of a check-sized form containing the name of the issuing bank, an amount impressed into the paper, an identification number, and an indication that it is not valid in excess of a specified sum, usually between $100 and $250. A widely used 'snap-out' form of the order has three elements: the instrument itself, a register copy kept by the bank, and a customer's record copy. While all three record the identification number and amount of the order, the bank's copy does not indicate the identity of the purchaser or the payee. The customer may complete the original and his copy by filling in the name of the payee, the date, and his own signature at any time after he purchases the instrument. However, bold-face print on the customer's copy often cautions him to fill out the order promptly and to save the copy; it may even state that the customer assumes responsibility for his failure to do so.

487 P.2d at 257-58, n.1.

The personal money order submitted by Kinnaman contained all the indicia alluded to in the article. The value of the money order was imprinted; it was noted on the face of the money order that it was void over $5,000; and the money order expressly noted that the purchaser agree to insert "his signature and address, date and the name of the payee, anc assumes the responsibility for all events made possible by his failure tc do so."

While appellant's bank stated that a personal money order was not equivalent to a personal check, the generally accepted view is that it is Thompson v. Lake County National Bank, 353 N.E.2d 895, 897 (Ohio App. 1975); State v. LaRue, supra. A key consideration for our purposes is th a personal money order, unlike either a bank money order or a cashier's check, is subject to a stop payment order. Compare Thompson v. Lake Cour National Bank, supra; Krom v. Chemical Bank New York Trust Company, 329 N.Y.S.2d 91 (N.Y. App. 1972) (personal money order subject to stop payment order), with Meckler v. Highland Falls Savings & Loan Associatior 314 N.Y.S.2d 681 (N.Y. Sup. Ct. 1970) (bank money order not subject to st payment order), and Pennsylvania v. Curtiss National Bank of Miami Spring 427 F.2d 395, 398 (5th Cir. 1970) (cashier's check not subject to stop payment order). See also Hong Kong Importers, Inc. v. American Express Co., 301 So.2d. 707, 710, n.6 (La. App. 1974).

It seems clear that a personal money order is equivalent to a persona check to the extent that payment may be stopped anytime prior to acceptance. The question we must examine is whether the use of the term "money order" in 43 CFR 3120.1-4(b) necessarily implies a guaranteed remittance. We hold that it does not.

While the Board has not, heretofore, interpreted the term "money order" as it relates to 43 CFR 3120.1-4(b), the Board has, on a number of occasions in the past, examined this question as regards other regulation Most notably, until an amendatory change was promulgated on August 17, 1973, applicants for simultaneous oil and gas leases were required to fil the first year's rental in advance. The applicable regulation read:

> The entry card must be accompanied by separate remittances covering the filing fee of $10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

43 CFR 3112.2-1(a)(2) (1972). In Georgette B. Lee, 3 IBLA 272 (1971), appellants had protested, *inter alia*, against the acceptance of corporate checks labeled "money orders" as payment of the first year's rental. The State Office had rejected their protest. On appeal, appellants argued th the intent of regulation was clearly to require remittances which guaranteed payment. In rejecting their appeal, this Board noted:

> The intent of the regulation was to limit remittances of advance rentals to those forms which would guarantee payment unconditionally. However, intent is not always coincidental with result in legal draftsmanship. We cannot apply the restrictive interpretation suggested by appellants to the words "money order" as currently incorporated in this section of the regulations. It has been the Department's position in the past in interpreting latent ambiguities in favor of public land applicants. Where an applicant is to be deprived of a statutory right because of his failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no reasonable basis for noncompliance. [Citations omitted.]

3 IBLA at 276. *Accord*, R. M. Barton, 7 IBLA 230 (1972); R. M. Barton, 7 IBLA 68 (1972).

The instant regulation merely states that each bidder must submit wit his or her bid a "[c]ertified check on a solvent bank, money order, or cash, for one-fifth the amount bid." The Notice of Competitive Oil and G Lease Sale stated, "Bidders must submit with each bid one-fifth of the amount bid in cash or by cashier's check, certified check, or money order payable to the order of the Bureau of

Land Management." Neither the regulations nor the notice indicated that postal or bank money order was required, or that the form of payment must entail a guaranteed remittance. Thus, we find that the precedent established in Georgette B. Lee, supra, must be followed herein.

There is no inherent unfairness to any party to the bid sale since an applicant is free to utilize such money orders. If BLM is desirous of requiring a guaranteed remittance, it may amend the regulation. It may not, however, reject such money orders absent corrective actions on its part.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is reversed and the case file is remanded for further adjudication consistent herewith.

James L. Burski
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge